

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

HECTOR HERNANDEZ-CORNEJO,

Defendant.

No. CV 12-0480 JC/WPL  
CR 10-3131 JC  
CR 10-3338 JC

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court, *sua sponte* under rules 4(b), 11(a) of the Rules Governing Section 2255 Cases, on Defendant's Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence (CV Doc. 1; CR 10-3131 JC, Doc. 27). Defendant alleges that his attorney failed to request a fast-track departure in sentencing proceedings. The Court will dismiss the motion.

As a preliminary matter, the Court notes that Defendant was prosecuted in two related criminal proceedings for reentry by a removed alien. In case No. CR 10-3131 JC, the Court revoked Defendant's probation in a reentry proceeding that had been transferred from the District of Utah. In case No. CR 10-3338 JC (originally filed in this Court), the Court convicted Defendant of reentry by a removed alien. Defendant was sentenced in both cases at a single hearing on February 16, 2011. In his § 2255 motion, Defendant challenges the sentence imposed for illegal reentry in case No. CR 10-3338 JC, although the caption of the motion identifies only the transferred case, No. CR 10-3131 JC.

No relief is available on Defendant's allegation that his attorney failed to argue for a shorter term of imprisonment based on the early disposition ("fast-track") program for alien reentry prosecutions. *See, e.g., U.S. v. Morales-Chaires* 430 F.3d 1124, 1127 n.5 (10th Cir. 2005). In the

first place, “The Department of Justice’s Fast-Track Policy . . . did not create any substantive or procedural rights for Defendant.” *United States v. Seledon-Lopez*, No. 2:09-cr-0246-RLH-RJJ, 2012 WL 1744535 (D. Nev. Mar. 15, 2012). And second, contrary to Defendant’s assertion, his reentry sentence imposed by this Court included a downward departure under the District’s early disposition program. *See* CR 10-3131 JC, Doc. 21. Furthermore, the record of the earlier Utah prosecution indicates that Defendant also received the benefit of a fast-track program in that case. *See* CR 10-3131 JC, Doc. 1, p.4. Because Defendant received the benefit of fast-track programs in both of his criminal prosecutions, his claim that his attorney provided ineffective assistance by failing to request a fast-track departure presents no grounds for relief. *Cf. United States v. Cook*, 45 F.3d 388, 392-93 (10th Cir. 1995) (“If the omitted issue is without merit, counsel’s failure to raise it ‘does not constitute constitutionally ineffective assistance of counsel.’ ”) (quoting *United States v. Dixon*, 1 F.3d 1080, 1084 n.5 (10th Cir. 1993)).

Furthermore, *sua sponte* under rule 11(a) of the Rules Governing Section 2255 Cases, the Court determines that Defendant has failed to make a substantial showing that he has been denied a constitutional right. The Court will therefore deny a certificate of appealability.

IT IS THEREFORE ORDERED that Defendant’s Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence (CV Doc. 1; CR 10-3131 JC, Doc. 27) is DISMISSED with prejudice, a certificate of appealability is DENIED, judgment will be entered, and the Clerk is directed to enter this order and accompanying judgment on the docket of all three captioned cases.



UNITED STATES DISTRICT JUDGE